

UNITED STATES DISTRICT COURT
for
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

U.S.A. vs. Rafael Alexander McLean

Docket No. 5:00-CR-47-1BO

Petition for Action on Supervised Release

COMES NOW Scott Plaster, probation officer of the court, presenting a petition for modification of the Judgment and Commitment Order of Rafael Alexander McLean, who, upon an earlier plea of guilty to Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1), was sentenced by the Honorable Terrence W. Boyle, U.S. District Judge, on November 27, 2000, to the custody of the Bureau of Prisons for a term of 115 months. It was further ordered that upon release from imprisonment the defendant be placed on supervised release for 36 months under the standard conditions adopted by the court and the following additional conditions:

1. The defendant shall pay to the United States a fine of \$10,000.00, the court finding that the defendant is without the ability to satisfy a fine within the prescribed guideline fine range or pay interest. Therefore, interest is waived. Payment of the total fine shall be due in full immediately.
2. The defendant shall pay a special assessment of \$100.00.

Rafael Alexander McLean was released from custody on June 9, 2010, at which time the term of supervised release commenced.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS:

The defendant is without the ability to immediately pay the remaining balance of the fine in the amount of \$8,524.89. Since his release from imprisonment, the defendant has been unable to secure employment.

On July 6, 2010, the defendant reported to the probation office for a scheduled appointment, at which time he submitted a drug test that was positive for the presence of marijuana, cocaine, and ecstasy. The defendant admitted marijuana and ecstasy use and signed an admission of drug use form to that effect, but he denied using cocaine. According to the defendant, his great uncle died on July, 1, 2010, and he reverted to marijuana use on July 4, 2010, to deal with the stress associated with the loss. When asked for an explanation as to his decision to use ecstasy, the defendant could not provide the probation officer with an explanation for his poor choice.

In an effort to afford the defendant every opportunity to succeed, deter future drug use, and to address the defendant's decision-making abilities, we are recommending that supervision continue with several modifications. First, we are recommending the defendant be permitted to make monthly payments towards the balance of the fine imposed at a rate of not less than \$25.00 per month, beginning no later than 60 days following release from imprisonment, or until such time the defendant secures employment. Next, in response to the defendant's choice to use illegal drugs, we are recommending the defendant participate in substance abuse treatment as directed by the probation officer, consent to warrantless searches, and participate in a cognitive behavioral program as directed by the probation officer. The defendant signed a Waiver of Hearing agreeing to the proposed modification of supervision.

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PRAYING THAT THE COURT WILL ORDER that supervised release be modified as follows:

1. The defendant shall pay a minimum of \$25.00 per month until the monetary penalty has been paid in full, beginning no later than 60 days following release from imprisonment, or until such time that the defendant secures employment.
2. The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.
3. The defendant shall consent to a warrantless search by a United States Probation Officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.
4. The defendant shall participate in a cognitive behavioral program as directed by the probation office.

Except as herein modified, the judgment shall remain in full force and effect.

Reviewed and approved,

I declare under penalty of perjury that the foregoing is true and correct.

/s/Jeffrey L. Keller
Jeffrey L. Keller
Supervising U.S. Probation Officer

/s/Scott Plaster
Scott Plaster
U.S. Probation Officer
310 New Bern Avenue, Room 610
Raleigh, NC 27601-1441
Phone: (919) 861-8660
Executed On: July 6, 2010

ORDER OF COURT

Considered and ordered this 6 day of July, 2010, and ordered filed and made a part of the records in the above case.

Terrence W. Boyle
Terrence W. Boyle
U.S. District Judge